

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOISE PEPION COBELL et al.)	
)	
Plaintiffs)	
)	
v.)	Civil Action No.
)	96-1285 (RCL)
GALE A. NORTON)	
SECRETARY OF THE INTERIOR, et al.)	
)	
Defendants)	
)	
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)	

THIRD REPORT OF THE COURT MONITOR

I. INTRODUCTION

This is the third in the series of reports submitted by the Court Monitor pursuant to this Court's Order of April 16, 2001, to review and monitor "all of the Interior defendants' trust reform activities and file written reports of (the Court Monitor's) findings with the Court."

The first report, submitted to the Court on July 11, 2001, addressed the Court Monitor's review of the Historical Accounting project. The second report, submitted on August 9, 2001, addressed the Court Monitor's review of the status of the Trust Asset and Accounting Management System's (TAAMS) development and deployment.

This third report will address the review by the Court Monitor of what is known as the High Level Implementation Plan's (HLIP) BIA Data Cleanup and Management (BIA Data Cleanup) subproject.

A. BIA Data Cleanup Project Definition And Goals

In the original HLIP, dated July 1998, at page 9 (extract at **Tab 1A**), the BIA Data Cleanup project was defined as follows:

"The Data Clean Up Sub projects within OST and BIA are aimed at ensuring data housed in existing or new systems are accurate and timely, and at eliminating transaction processing backlogs to ensure records are up-to-date, particularly land ownership information and records. Therefore, references to 'data clean up' in this Report should be viewed broadly, as including both data production (correction), and data updates (data and

information transaction processing).¹

The goal of the BIA Data Cleanup subproject as outlined in the BIA Data Clean Up section of the HLIP (**Tab 1B**) was to:

“ensure correct and updated data such that Indian trust records are accurate and meet integrity and operational standards.” *Id.* at 16

As explained in this section, there were two BIA-wide automated systems - the Land Records Information System (LRIS) and the Integrated Records Management System (IRMS). LRIS supported the land title function and was used primarily at the Land Title Records Offices (LTROs) but provided reports to the Agency offices. IRMS supported the land resource management function and was primarily used at the Agency level for generating lease bills and for income/revenue distribution to Indian owners. *Id.*

The LTROs in several locations had developed their own automated systems and other offices manually performed their functions. The information that had been entered manually into these two systems contained the same data elements, was not integrated or crosschecked, and had been inconsistently maintained by each module. LRIS and IRMS were not integrated and had no electronic interface between them, which allowed them to duplicate the same information in both systems in a potentially inconsistent manner. *Id.*

The focus of the BIA Data Cleanup effort was on the land title and resource management information maintained by the BIA in automated systems, microfilm/microfiche, and physical hardcopy files/folders. *Id.*

B. The Importance of the BIA Data Cleanup Subproject

The importance of the BIA Data Cleanup subproject was addressed in a July 1999 TAAMS Project Management Plan (extract at **Tab 1C**):

“The cleanup of trust data is the foundation upon which the new system will be laid. Without timely and accurate information, TAAMS cannot achieve the improvements in trust management that are expected.” *Id.*

The importance placed on the BIA Data Cleanup subproject was not lost on this Court at the time of trial in July 1999. During the Acting Special Trustee’s, Tommy Thompson, testimony about his concerns regarding the implementation and deployment of the TAAMS system, he spoke of the interrelationships of the subprojects with TAAMS and their impact on its success in the following dialogue on cross examination:

Q Mr. Thompson, I want to turn back to your memo of July 30th, if I could, and ask you a few more questions in that regard. First, could you read into the record the second to last sentence of that paragraph that we have been going through?

¹ The scope of the Court Monitor’s review and this Report does not encompass the Office of Special Trustee’s (OST) data cleanup subproject and is limited to the BIA data cleanup subproject.

A. the - - the - -

Q Beginning, "The project interdependencies."

A "The project interdependencies"?

Q Yes.

A. "The project interdependencies and the numerous critical actions that must be completed successfully at the last possible date raises the risk for failure significantly."

Q And these project interdependencies, could you explain what you meant? Is that the TAAMS, LRIS?

A As we discussed, there are a number of events that have to happen as you roll out a system: data cleanup, testing, training, et cetera. Trial Tr. at 3115-3116.

And later:

Q Do you believe that - - did you believe at the time that you wrote this that these risks were acceptable?

A They were acceptable to me, but, again, I was not in charge and I didn't have to make the final decision. That was left to higher management.

Q But if you were in charge, would they have been acceptable to you?

A I would not have organized the projects in this fashion were I in charge.

The Court: And you wouldn't today?

The Witness: I wouldn't start it today either.

The Court: Right

The Witness: No, I would keep them separate.

The Court: What would you do to unscramble that today if you had to unscramble it today?

The Witness: Well, it's - - to me it's a bit of a moot point. BIA has put the system on the ground out there. In other words, they proved me wrong, which I'm happy to say.

The Court: *It depends on data cleanup, doesn't it?*

The Witness: Data cleanup has to be done, yes, but the system is on the ground in Billings, and we can work with that. It narrows the things we have to deal with if we have to go to data cleanup. *Id.* at 3116-3118, emphasis added.

But the Court was driving at the point that the data had not been cleaned up and remained an

unknown risk of potential criticality. It stated:

The Court: Right. Now, when the contractor testified last week that data cleanup only means to him cleanup of data that's in LRIS and IRMS, so it doesn't even affect anything else - - he considers that data gathering and data inputting, not data cleanup - - *you've got a real major problem, don't you?*

The Witness: There's a disconnect in my mind, Your Honor. The data cleanup that we're talking about is going back and having some assurance that the data is correct. The data that the systems people, like Dom Nessi and the contractor, are dealing with is simply converting the data that they are handed. And our approach was to do some cleanup of that data before we converted it. They have done some minimal cleanup of that data before they put the TAAMS system in.

The Court: But the basic approach finally taken was not to verify any of that data, just to convert it over?

The Witness: I couldn't even tell you how much was verified because I'm not familiar with the protocols used by the contractor or by the people in Denver who worked on this. I know there were some anomalies that were corrected, but I don't know the extent of that. *Id.* at 3118-3119, emphasis added.

And finally for the Court's edification, Thompson read Assistant Secretary for Indian Affairs Kevin Gover's own statement about the subject:

The Witness: "I don't think there is any doubt, even on the plaintiffs' side, that this data cleanup and the installation of the new system is critical to have even the basics of a trust management system." *Id.* at 3127-3128.

The BIA Data Cleanup subproject was viewed by all parties to the *Cobell* litigation as critical to bringing about trust reform. Perhaps even of more importance than either of two of the other indispensable projects – the Historical Accounting and the TAAMS system deployment – data cleanup represented the foundation on which everything about trust reform had to be built. Without complete and accurate electronic data in TAAMS capable of timely reporting, no accounting would be possible for the IIM account holders of their historical or current land and resource management information. Without this information, the financial accounting system – TFAS – would not function even if it, as an independent computer system, was operable. But the data to be placed in TAAMS was located in two legacy computer systems, hardcopy records and documents, or, in a number of cases, was missing.

II. THE BIA DATA CLEANUP SUBPROJECT'S HISTORY

A. Pre-trial and Trial Evidence

The first HLIP, dated July 1998, contained a BIA Data Clean Up section (*see* **Tab 1B** at 16-20) that outlined the goals of the subproject. In part, it stated:

“The BIA Data Clean Up effort will be performed where the title and lease documents are maintained and used; will be performed by a combination of BIA staff familiar with these records/documents and contractors; and will focus on current data only.

Following clean up of data and information essential to the TAAMS Pilot in Billings, additional data clean up will be performed after migration to the new TAAMS and LRIS systems when a modern database and tools are available to support such an effort. The initial tasks under this Sub project will finalize the data clean up approach to take.

The BIA Data Clean Up Sub project will:

- Identify missing documents/data and enter the pertinent data into the appropriate systems;**
- Verify/Reconcile Current and Historical data;**
- Prepare data for conversion to new TAAMS and LRIS capabilities;**
- Establish effective data administration policies and procedures;**
- Coordinate the BIA Clean Up effort with the other clean up efforts (e.g., OST, OHA);**
- Provide clean land management data in time for the initial implementation of the new TAAMS system (a pilot) by February 1999 and full deployment to BIA Areas by June 2000;**
- Minimize impact to on-going land management activities at the LTROs, Agencies, and Tribes;**

Maximize contractor support to ensure that current daily operations are not adversely impacted and service remains responsive.”² *Id.* at 17.

The contractor selected in January 1999 for the BIA Data Cleanup subproject was DataCom Sciences, Inc. (DataCom); a Native American owned firm specializing in information technology, records management, and business support. The firm had previously assisted the OST in several of its trust reform subprojects.³ Its initial study entitled, “TAAMS Implementation Support: Data Cleanup Task,” dated January 27, 1999 (Tab 1D), recommended several solutions for completing data cleanup:

“Data cleanup includes three distinct tasks.

- “The first task is to input the current paperwork backlog of the BIA offices, prioritized by critical and non-critical**

² The systems concept was later refined and LRIS’ functions were rolled into TAAMS instead of LRIS continuing as a separate system. *See*, generally, Trial Tr. at 2263-2268 and 2967-2968.

³ There have been other contractors involved in data cleanup operations. But DataCom has been responsible for the major areas of contractor-supported data cleanup from the start of BIA Data Cleanup operations.

- The second task is to investigate and resolve data-related errors identified during system conversion
- The third task is to verify – to the greatest extent practical – the accuracy and completeness of BIA’s data, including an exit report quantifying the accuracy and completeness of data at each site.

The recommendations presented here are constrained by the aggressive TAAMS implementation schedule, by the disparity of the legacy systems being replaced by TAAMS, and by the equivocal scope and complexity of the cleanup tasks themselves.

This report recommends a decentralized approach in which cleanup is performed at each Area (Region), Agency, and Tribal office using a combination of core team members deployed from Albuquerque and supplemental team members hired local to each Area Office. The core team members would be in place during conversion activities at the Area Office and one Agency Office, and would then be re-deployed to begin cleanup in the next scheduled Area Office. The locally hired cleanup team members would stay to complete TAAMS implementation at the remaining Agency and Tribal Offices in that Area, and to perform the post-conversion cleanup tasks.” *Id.* at 2.

DataCom was expected to proceed with data cleanup to meet the aggressive TAAMS implementation schedule that was to run from June 1999 for Billings, Montana (Rocky Mountain Region) and continued on with implementation through all 12 Regions ending with Sacramento, California (Pacific Region) in May 2000.

DataCom also was expected to do the data cleanup. It would not be the responsibility of the Regional offices. *See* Nessi testimony, Trial Tr. at 2536. Most of the data cleanup would be performed once the data had been converted or manually inputted into TAAMS. *See* Trial Tr. at 2970-2971.

Although the BIA Data Cleanup subproject was still in its infancy at the time of trial in July 1999, the Acting Trustee, Tommy Thompson, had expressed concerns about BIA’s ability to meet the aggressive schedule they had set. Shown a memorandum that he had authored during cross-examination, the following dialogue ensued:

Q And when you say Billings will be ready, but the other sites question mark, does that suggest that just because Billings may be successful in the data cleanup effort, may not necessary indicate that others will also be ready on time?

A I would think that - -

Q Is that a fair interpretation?

A My sense is that there would be a risk of that not occurring, given the schedule. Trial Tr. at 3079.

And later, he read part of the memorandum he authored:

A “I am concerned, based on personal experience and corporate history, with the schedule compression and project approach BIA contemplates in the plan for BIA data cleanup, and the TAAMS and LRIS systems implementation.”

Q When you say in that - - when you use the term “corporate history,” what did you mean by that?

A The corporate history I was referring to is working in the past with the Bureau of Indian Affairs on this issue and on other issues, and trying to get the follow-through and the commitment that is needed for an effort such as this. I didn’t think the record was sterling. *Id.* at 3104.

And finally, in speaking of the LRIS, TAAMS and data cleanup subprojects’ integration:

Q And what made - - what precisely makes the combination of three elements, these three subprojects? What makes that such a high risk?

A Well, the problem I had with this was that, one, the Special Trustee’s look at the systems indicated that perhaps the land record information system, the LRIS part, wasn’t as in dire straits as the land management, the IRMS portion of this system. And we had advised that they should work - - spend more time on the IRMS replacement systems, TAAMS, and do LRIS as a second step. So they had basically combined the two of those.

The second problem I saw was that with but a year left before the rollout of a new system, with all kinds of procurement, data cleanup, staffing, et cetera, it just appeared to me to increase the risk of failure or delay on the rollout of this new system. *Id.* at 3106.

But Thompson, however prophetic his concerns might have been, did not have the data to judge just how far behind the data cleanup effort might fall if all did not go as planned. In response to this Court’s question regarding whether there had been “slippage” in January 1999 in the BIA data cleanup effort, he replied:

A I honestly don’t know. At this point, we were still trying to assess what the impact was of trying to do these systems all at one point. This was about a month after the contract was awarded to Artesia, and we had not seen yet their approach for this. *Id.* at 3111.

But he had gained a somewhat false sense of security which he relayed to the Court because the TAAMS system had allegedly been introduced on time in June 1999 by BIA in Billings as testified to by Dom Nessi, the TAAMS Project Manager:

Q Do you believe that - - did you believe at the time that you wrote this that these risks were acceptable?

A They were acceptable to me, but, again, I was not in charge and I didn’t have to make the final decision. That was left to higher management.

Q But if you were in charge, would they have been acceptable to you?

A I would not have organized the projects in this fashion were I in charge.

The Court: And you wouldn't today?

The Witness: I wouldn't start it today either.

The Court: Right.

The Witness: No, I would keep them separate.

The Court: What would you do to unscramble that today if you had to unscramble it today?

The Witness: Well, it's - - to me it's a bit of a moot point. BIA has put the system on the ground out there. In other words, they proved me wrong, which I'm happy to say. *Id.*, at 3117-3118.

Further illustrating the basis for Thompson's concerns, the plaintiffs' own accounting expert, Sharon Fitzsimmons of Price Waterhouse Coopers, who had attended the trial and reviewed the testimony and exhibits presented at the trial on BIA Data Cleanup, had the following dialogue with the plaintiffs' counsel:

Q What is your understanding of data cleanup in the High Level Implementation Plan?

A As it's stated in the High Level Implementation Plan?

Q That's correct.

A My understanding of data cleanup is it's not defined in the High Level Implementation Plan, and the discussion of data cleanup relates to, as I read it, the gathering of all the documents that Interior can find and the sorting of those documents into appropriate files.

It also includes, as information is input into these new systems and new modules, that it be correctly moved over from one system to another without errors in that transition process.

Q How difficult a problem is data cleanup, to your knowledge?

A I think it's a huge part of the issue with the Indian funds.... This seems to be a one-directional data cleanup of let's get all the documents into the right files. There is a completely different directly (sic) you must take with data cleanup to ensure that you get to the end result, which is that the accounts are supported by the relevant documentation, and the best form of documentation is third-party document of probate information, title, third-party receipts and so forth

Q How do go about doing this? What is the - - you said one way. What's the - - is this a two-way process, then?

A At least a two-way process. You can really look at it - - as these both ways. The discussion so far of data cleanup has been let's get what we have and tidy it up. It's what is

not there that is my far greater concern,” Trial Tr. at 4282-4284.

She testified further about the missing information:

Q How do you fix them if documents are missing?

A The documents have to be acquired from going back to original sources.

Q Would you be able to do an accounting without satisfactory documentation?

A You would not be assured that the accounts were validly supported. *Id.* at 4291.

And finally, in answering both the plaintiffs’ counsel and the Court’s questions:

Q If TAAMS is implemented and rolled out without a comprehensive data cleanup plan, what concerns would you have?

A Well, TAAMS, as has been testified, provides a useful tool for helping clean up the data, but if the data in TAAMS is wrong, then payments will continue to go out in the wrong amount to the wrong people.

Q Let’s move on to another subject.

The Court: And that’s really inevitable until there’s a data cleanup, isn’t it?

The Witness: Correct. *Id.* at 4295.

In summation, Fitzsimmons was asked about Thompson’s testimony about data cleanup:

Q Did you hear Mr. Thompson describe his understanding of data cleanup as part of the trust reform effort?

A Yes.

Q What is your recollection of what Mr. Thompson said?

A Well, I don’t think I can quote what he said, but his summary of data cleanup, again, spoke to gathering the documents that Interior currently has. As I said, my concern is what’s not there.

Q To the best of your recollection, do you recall if Mr. Thompson stated he was aware of the status of data cleanup at the BIA?

A I believe he said that he couldn’t speak to that topic.

Q And did he say he didn’t know?

A I think so, yes.

The Court: Well, there has been no testimony of any plan to do anything beyond gather data that they already have, and part of your point as an auditor, as auditors frequently go to other sources to replace data that's missing, besides just gather what you have in your own files, right?

The Witness: That's right....

And later:

The Court: Auditors - - I mean, I get things from CPAs in the mail at home on auditing an account in a bank or a credit union or whatever. That's the same kind of thing auditors frequently do to go - -

The Witness: You mean confirming with an independent sources. It's the best form of - - the very best form of evidence is when the auditor sees it with their own eyes.

The Court: Right.

The Witness: But getting it from a third party, an independent party, is very, very, strong evidence.

The Court: And there is no plan here to ever do that so far that we have seen. Is that right or not?

The Witness: Well, I haven't heard it addressed. It's going to have to be done.

The Court: Right.

The Witness: It's missing from the HLIP. *Id.* at 4301.

D. Post-trial Evidence

Within six months after the trial on trust reform and the Interior defendants' testimony about data cleanup, the DOI's experience with the BIA Data Cleanup subproject had provided a growing scenario of problems. These were recounted and documented in the revised HLIP submitted to the Court in February 2000.

The BIA TAAMS and Data Cleanup Project Manager, Dom Nessi, provided an "Observations Of Data Cleanup Progress" section at page 22-24 of the HLIP (Tab 2A). His observations first addressed the data cleanup in general:

"One of the difficult aspects of the BIA Data Cleanup task is that the data needed to properly plan the effort from beginning to end, including precise milestones, are essentially unavailable. When the Data Cleanup process began in January 1999, the extent to which this factor would impact planning had not yet been determined. While the BIA has learned a great deal about the character of its data, it is difficult to quantify the extent of the data problem in any comprehensive manner. We have found that: 1) each BIA and tribal site's Data Cleanup issues are very different; 2) the nature of processing backlogs is difficult to assess; 3) the lack of uniform nation-wide legacy systems makes gathering information difficult; 4) data definitions differ from region to region and, in some cases, agency to

agency to agency within the same region; and 5) the BIA's business process has permitted regional variation in its data rules to the extent that key information such as the format of Indian owner identification numbers differs considerably from one region to another. *To perform a full data assessment would take so long that by the time the final office was completed, the information gathered from the first office would no longer be valid.*" *Id.* at 22, emphasis added.

Nessi also noted that in some geographical locations it was not even possible to find a sufficient number of qualified personnel to properly staff the BIA Data Cleanup offices. There was no ability to predict how this factor would impact on the duration of time required to complete the Data Cleanup task. *Id.*

Continuing, Nessi addressed pre-implementation data cleanup. Extracted quotes from this discussion highlight issues that had raised concerns at trial but had been downplayed:

"It was initially believed that a minimum standard for readiness could be established for all Data Cleanup sites. However, experience is some sites has proven otherwise. Some BIA sites present such great Data Cleanup challenges that it could be years before the data is sufficiently ready for system deployment using our initial standard. As a result, it was determined that a separate strategy would be determined for each Data Cleanup site, concentrating on ensuring that the most basic requirements of data integrity were met, such as the elimination of duplicate records in the legacy systems. Furthermore, these initial 'cleanup' efforts would be aimed at facilitating the data migration from the legacy system to TAAMS.

In some regions, we have discovered that data migration would be inefficient and ineffective since the existing systems were in such poor condition and used so sporadically. In these cases, the contractor is entering the entire TAAMS database directly from hardcopy records.

Furthermore, it has become very clear that it would not be possible to conduct a long pre-implementation Data Cleanup using the existing legacy systems. The legacy systems lack any data integrity features such as filters and edits, they operate slowly and are frequently unavailable due to system and network issues. While the Department does not wish to enter data into TAAMS that is not thoroughly analyzed, there is an advantage to using TAAMS for data entry and data correction with its graphical interface, built-in filters and edit routines. Id. at 23, emphasis added.

Abandoning the pre-implementation data cleanup process to a large extent, the Interior defendants chose a course of entering the uncorrected and possibly incomplete data into the TAAMS system for correction and integrity assessment following TAAMS deployment to an office or even after the TAAMS system was implemented.

Concluding his Observations, Nessi stated:

"While it is difficult to estimate a total cost and duration for the entire cleanup effort at this time, a few key observations can be derived. First, the data is not getting any better and

immediate action is necessary. Second, the Data Cleanup conducted at sites over the past year has already produced a significant improvement in the data. Third, through careful management attention, the Department can minimize any negative impact by loading data into TAAMS before it is completely verified. Fourth, greater management attention in the area of data quality is essential to maintain the level of data quality as it arises. Finally, the data problems are the result of a lack of resources over an extended period of years that cannot be reversed without a permanent infusion of resources and the continuance of Data Cleanup activities over an extended period of time.” Id. at 24, emphasis added.⁴

The balance of the BIA Data Cleanup section of the revised HLIP dealt with objectives and outcomes planned for the project. There was little evidence of the status of the data cleanup project. Several statements, however, bear mention.

- The Eastern Regional Office had sufficient problems associated with its record-keeping that the BIA decided to move its Title Plant operations from the Eastern Region to the Southern Plains Region at Anadarko, OK. *Id.* at 27.
- The Alaska Region had no legacy computer systems and data cleanup had entailed the copying of all pertinent trust records, shipping the copies to Albuquerque, NM for direct entry into TAAMS. *Id.* at 30.
- Data Cleanup was rescheduled from *completion* in May 2000 to *initiation* in all 12 BIA Regions by June 2000. *Id.*
- A *statistical* assessment would be used to measure the level of data accuracy in TAAMS using a *sample* of hardcopy documents. *Id.* at 30-31.
- The final data cleanup task – post-deployment cleanup – was scheduled to be completed at all sites by the end of fiscal year 2003. *Id.* at 34.
- The BIA had established security requirements for the varying levels of TAAMS access and the ability to manipulate data in the system had been and would be tightly monitored to ensure proper controls within the system. *Id.* at 35.

Quarterly Report Number 1, submitted to the Court in March 2000, listed at the BIA Data Cleanup and Management section (Tab 2B) a number of accomplishments including:

- More than 2000 records were analyzed, researched and corrected prior to conversion in the Rocky Mountain Region. *Id.* at 7.
- Local office preparation of files, records, and legacy systems has been completed in all Regions and the contractor had completed the assessment of

⁴ Nessi stated to the Court Monitor that he had demanded to be allowed to place these “Observations” in the HLIP over the objections of his superiors to attempt to appraise this Court of the major discrepancies regarding his testimony about the relative ease of data cleanup once he realized the truth.

the records in nine Regions. *Id.*

Data for 18,000 tracts in the Alaska Region had been entered into TAAMS by the contractor.⁵ *Id.* at 8.

Quarterly Status Report to the Court Number 2's BIA Data Cleanup chapter (Tab 2C) listed a number of "significant activities" in a two-page report. But the information did not provide any way of estimating the status of the data cleanup subproject by comparing those activities, including completed record review and data conversions, with the total that needed to be done.

Quarterly Status Report to the Court Number Three submitted to the Court in August 2000, was more forthcoming in light of the addition of the new Special Trustee Observations (Tab 2D) that stated:

"Indications are that the BIA Data Cleanup effort continues to present serious challenges and may delay implementation of TAAMS at some locations. For example, in the Rocky Mountain Regional Office (Billings), the historical records for land title and records are not complete and cannot immediately be placed into TAAMS until the missing electronic records are researched and entered into the legacy database.

The Special Trustee will also work with the BIA subproject manager to obtain meaningful metrics on the progress of the BIA data cleanup effort." *Id.* at 3.

The Special Trustee had recognized that the previous Quarterly Reports gave the Court no indication of where the Data Cleanup subproject stood with regard to judging whether it was on schedule to be completed by June 2003.

But, as previously noted in the Second Report of the Court Monitor, the Special Trustee had wanted to provide more information on data cleanup.⁶ His *draft* Observations on data cleanup had stated:

"Recent indications are that the BIA Data Cleanup and data conversion effort continues to present serious obstacles to the successful implementation of TAAMS. The BIA data cleanup effort continues to uncover significantly greater data cleanup challenges than were previously anticipated. For instance, more than 15 months after data cleanup commenced in Billings, the data is still not completely converted, nor cleaned up sufficiently to implement TAAMS in Billings.

The 'case' or data anomaly, statistics presented in the subproject report section do not provide sufficient information to evaluate, or validate, the progress we need or the integrity of the data." *Id.* at page 86 and Tab 9H, Second Report.

Those statistics, contained in the BIA Data Cleanup And Management chapter of

⁵ There were 18,000 tracts of land in Alaska but it is unclear how much hardcopy data had been entered by this date. According to DataCom personnel interviews, by August 2001, complete and corrected information on only 1100 land tracts has been fully entered into TAAMS.

⁶ See Second Report at 85-91.

this Third Quarterly Report (Tab 2E) did not provide any method for determining when the data cleanup subproject would be completed nor indication of the problems that the Special Trustee had observed. The report did note that a new project to assess the accuracy of the legacy systems' data conversion to TAAMS as well as the accuracy of the data in the legacy systems was in the pilot stage. Called "TIME" for "TAAMS Information Migration Evaluation," the project was to identify the data accuracy, completeness, and timeliness in the legacy and TAAMS systems at selected BIA sites. DataCom would administer the project. *Id.* at 9.

Two other statements bear repeating. The Rocky Mountain Region, site of the first BIA TAAMS rollout and testing, continued to find data anomalies that had to be corrected outside of the normal data entry processes contained in TAAMS. Also, another BIA manager had assumed the TAAMS and Data Cleanup Project Manager role, replacing Dom Nessi. *Id.* at 10.

Quarterly Status Report to the Court Number Four, submitted November 30, 2000 included a Special Trustee Observations section (Tab 3A) that stated:

"BIA Data Cleanup

BIA Data Cleanup will remain a difficult challenge from both a time and logistical perspective. An important component of the data cleanup exercise is establishing metrics that indicate improvements in the data quality. BIA management is working with the data cleanup contractor to establish more precise indicators of progress and has set completion dates (see Chapter 2, BIA Data Cleanup)....

Metrics for BIA Data Cleanup

The Special Trustee will also work with the BIA subproject manager to obtain meaningful metrics on the progress of the BIA data cleanup effort.

BIA's Chief Information Officer and OST have determined a format for charting the cleanup process in each region. That information will appear in a chart that will be refined for use in the next quarterly report, and will provide observers a more useful monitoring tool." *Id.* at 6-7.

Chapter 2 of this Quarterly Report, "BIA Data Cleanup and Management" (Tab 3B), listed some "Ongoing Activities," among which several are worth repeating:

"Data cleanup continued at ten BIA Regional Offices and 18 agencies during the reporting period....

DataCom Sciences recently completed the first TAAMS Information Migration Evaluation (TIME) for the Rocky Mountain Region.... The legacy data (LRIS) was compared with the actual paper records to determine accuracy. TIME found that of the 541 documents studied, 33.4 percent had at least one error – the majority being previous data entry errors on the part of BIA staff, as opposed to missing data. Of the total number of mandatory fields on all of the 541 documents (13,688 fields), 1,900 errors were discovered for an error rate of 13.88 percent.... The TIME analysis will now be conducted at other regional sites beginning in December 2000.

The result of this analysis gives the BIA a better understanding of the data cleanup challenge that exists in its regional offices, and provides a benchmark for determining the success of data cleanup efforts and continued data management efforts to maintain data integrity.⁷

Consistent with the new TAAMS deployment approach (see discussion in Chapter 6, TAAMS, Summary of Ongoing Activities), DataCom will concentrate its data cleanup efforts to correspond with the TAAMS deployment schedules for Groups A, B and C.... No ongoing data cleanup activities are being curtailed, but all new activities will be focused on Group A sites.

Additionally, the BIA and DataCom are looking at redefining the manner in which the actual data cleanup is being carried out. The extent of the data cleanup need in some regions will be far more extensive and a different method will need to be developed to ensure that data cleanup is completed in a comprehensive manner. For example, data cleanup by tract is being considered in those areas where data cleanup activities are more extensive.

DataCom continued to focus on obtaining realty information for assessment preparation....

The reports received indicate that very few regions will be eligible for conversion from existing legacy systems. The majority of leasing activities are carried out using personal computer software or manually – these methods are not conducive to a data migration effort.

DataCom has presented an alternative method for data cleanup which will require direct data entry for all existing leases, contracts, and agreements for any region where legacy data is not readily available for migration. Further decisions on this effort will be made after the TAAMS lease module is completed and operational in the Rocky Mountain Region.

BIA has provided the following schedule of activities and dates planned for the coming months:

**December 11, 2000 – initiate TIME in the Southern Plains Region
February 5, 2001 – initiate TIME in the Northwest Region
February 23, 2001 – complete land title and records data cleanup in the Rocky Mountain Region....**

Pre-deployment data cleanup activities are occurring in all Regional Office jurisdictions, with the exception of the Eastern Oklahoma Regional Office, where title information is retained by the county. At present, and in conjunction with TAAMS deployment, the data cleanup emphasis is on the data utilized at the Land Title Records Offices (LTROs).

⁷ But see pages 25-29 and **Tab 4C** of this Report. This was a TIME test of LRIS in the Rocky Mountain Region. At the same time, there was also a TIME test done on the electronic data that had been converted from LRIS into TAAMS. This test was not reported to this Court in this Quarterly Report or any other DataCom public or internal report at the direction of Dom Nessi, the subproject manager. Nor did the TIME assessment offer any analysis of the results. Those results included statements that over 30% of the LRIS electronic data records had at least one error in them and that there was nearly a 14% error rate in the overall data entered into LRIS that would be or had been converted into TAAMS. But there was no indication of the relative seriousness of the errors and whether the database was so badly corrupted as to be unusable.

Cleanup has focused primarily on eliminating data anomalies that impact on data migration activities.” *Id.* at 13-15.

The chapter gave an overview of the data cleanup by Region and by task giving percentages of completion for individual tasks. However, there was no indication of whether these tasks represented all tasks that needed to be performed in a given Region to constitute completion of data cleanup.

Quarterly Status Report to the Court Number Five, submitted to the Court on February 28, 2001, contained a BIA Data Cleanup and Management chapter (Tab 3C) but no Special Trustee Observations concerning data cleanup. In their place, Appendix B (Tab 3D) contained a series of charts that the Special Trustee had referred to in his last Quarterly Report. But they contained no explanation as to what the percentage completeness of any of the listed tasks meant with regard to data cleanup progress or completion in any Region. Nor was there any explanation provided with the charts or what the tasks represented with regard to their overall impact on data cleanup.

The BIA Data Cleanup and Management chapter did report on a number of developments. It was noted again that:

“Consistent with the new TAAMS deployment approach, DataCom Sciences, Inc., the BIA data cleanup contractor, is concentrating its data cleanup efforts to correspond with the TAAMS deployment schedules for Group A, the Rocky Mountain, Southern Plains, Alaska and Eastern Oklahoma Regions. No ongoing data cleanup activities are being curtailed, but all new activities will be focused on Group A sites.” Tab 3C at 13.

This statement in the last two Quarterly Reports meant that since TAAMS was incapable of testing any module but current Title and only that module would be rolled out to the Group A Land Title Records and Service Offices, data cleanup would focus on land title data as opposed to both that data and realty (leasing) data.⁸ The fact that data cleanup emphasis would be focused on the Land Title and Records Offices (LTROs) was stated later in the report at pages 13-14.

It was again noted that consideration was being given to redefining the manner in which the actual data cleanup should be performed. Two options under consideration included data cleanup by tract and the DataCom proposal to do direct data entry for any Region where legacy data was not readily available for migration into TAAMS. *Id.* at 13.

In other words, the data in the legacy systems was so incomplete or inaccurate that it could not be converted directly into TAAMS. As the decision on these options was to be delayed until the TAAMS leasing module was completed and operational, it can be assumed that the data in question was at least the IRMS leasing or realty data.

⁸ See, generally, Second Report at 41-55 and 79-82.

The report again noted that pre-deployment data cleanup was continuing in all Regions but the Eastern Oklahoma Regional Office. There, title information was retained by the counties and apparently was not available to BIA for data cleanup or conversion into the legacy system or TAAMS. *Id.*

It was further noted that to monitor data integrity in the legacy systems through the TAAMS conversion process, BIA personnel were scanning random data samples and comparing them to the information housed in LRIS. In other words, a statistical sampling was being carried out comparing hardcopy data to that existing data in the LRIS legacy systems. But no evidence of the size of the samples was provided to determine the correlation between the results of the sample analysis and the actual data integrity in LRIS. These TIME data integrity tests had been initiated on a document-based sample on December 29, 2000 in the Rocky Mountain Region; on December 4, 2000 in the Great Plains Regional Office; and on December 11, 2000 in the Northwest Region. *Id.* at 15-16.

Quarterly Status Report to the Court Number Six, submitted to the Court in May 2001, did include Special Trustee Observations (Tab 3E). They stated in part:

“As indicated in the last three Quarterly Reports, the Special Trustee has expressed heightened concern about the project management capabilities assigned to several major HLIP subprojects. *Those concerns center on such matters as a lack of clear strategy, adequate financial and staff planning, communications, and the appropriate direction of contractors.* The Special Trustee has discussed his concerns with the Department’s executive management as well as his Advisory Board at their meetings in November 2000, and this past February. Given the complexity of several projects, *we may not know the full depth of the problems in those projects until the management issues are resolved satisfactorily.* The Department has several options under active consideration to strengthen the management of those subprojects....

The Special Trustee continues to be concerned about the progress in the BIA Data Cleanup project. Specifically, *the project management is not sufficient for reasons mentioned above. The Special Trustee is also concerned that the contractor is not being provided appropriate direction in the field, and that progress measurement (as mentioned in previous Reports) continues to be insufficient.* A review of the present strategy is needed to allay these concerns. Accordingly, the Special Trustee tasked his Principal Deputy to chair a working group to validate the existing statement of work, assess the direction of this project, and provide recommendations on future management direction, priorities, scheduling and funding for the project. *Id.* at 3-4, emphasis added.

The BIA Data Cleanup and Management chapter of the Report (Tab 3F), described a number of data cleanup issues worthy of mention:

- Data cleanup was currently focused on the land title and records data at all Regions. *Id.* at 12.
- An evaluation of the data cleanup efforts was being carried out by not only the Special Trustee’s Working Group but also the TAAMS Project Management Team.

Id.

- Alaska and Eastern Oklahoma Regions were encoding their title data directly into TAAMS. *Id.*
- Eastern Region title functions were transferred to Southern Plains Region. *Id.*
- Realty legacy data from IRMS would be encoded directly into TAAMS since IRMS was not used bureau-wide. *Id.*

Apparently, no Realty legacy data had been converted into TAAMS up to this point. A decision had been made to do it manually in some locations.

Finally, the TIME tests were expanded to include the Southern Plains. Any available results of the four Regional tests were not reported. *Id.* at 13.

This Quarterly Report also included BIA Data Cleanup Charts at Appendix B (Tab 3G) that again listed, by Region, a series of tasks and the percentage completion of each one.⁹

III. THE BIA DATA CLEANUP SUBPROJECT'S PRESENT STATUS

The Quarterly Reports provided to this Court to appraise it of the status of trust reform in general and data cleanup in particular have provided it with little hard data on which to base a determination of where the BIA Data Cleanup subproject stood with respect to completion; completion in terms of not only data conversion or hard copy encoding but analysis of the integrity, accuracy, and completeness of the data in TAAMS. The Quarterly Reports raised more questions than they answered. Specifically, it was clear from the Reports that:

- The Special Trustee has had serious concerns since soon after his arrival in the summer of 2000 about the Data Cleanup project management's capabilities centering on a clear strategy, planning, communications and the direction of contractors. He also has been concerned about the overall progress of data cleanup. However, he had not been able to closely review or oversee data cleanup operations until recently when he was given the authority by the Secretary of the Interior to more closely supervise trust reform and retained an outside management consulting firm to review all of the HLIP subprojects and their management.
- The data cleanup subproject had been limited to Title records following the decision to only deploy the TAAMS Title module to Billings and three other

⁹ Both Quarterly Status Reports to the Court Number Five and Six did not list the Eastern Oklahoma Region in their charts. Also, the Midwestern Region tasking was mentioned in the body of the Great Plains chart. The reasons for the manner of the labeling of the charts and the absence of the Eastern Oklahoma Region will be discussed later.

Title Plants or Service Offices.

- **At least two Regions' title data has to be entered manually into TAAMS.**
- **The Eastern Region could not conduct its own data cleanup and its Title office has been moved to the Southern Plains Region while a contractor collected the Region's hardcopy records.**
- **IRMS data could not be converted into TAAMS and would have to be entered manually in most Regions.**
- **TIME tests were to be carried out to determine data integrity in TAAMS on a sample basis.**

There was no evidence provided in the Quarterly Reports of when the BIA Data Cleanup project would be completed in any Region sufficient for TAAMS to be declared the system of record using the newly converted and certified data.¹⁰

- **It was estimated by DataCom that 75% of the remaining data to be placed into TAAMS is not in any system and will have to be manually encoded into TAAMS.**

To answer the questions raised by the few hard facts that can be gained from the Quarterly Reports, the Court Monitor sought to interview not only the BIA managers and employees having responsibility for data cleanup but also employees of the major data cleanup contractor, DataCom Sciences, to determine the present status of BIA Data Cleanup. Specifically, in regard to that status:

- **What was the actual status of the conversion and encoding of Title and Realty electronic and hardcopy data into TAAMS in each Region including subordinate Agencies?**

How long would it be before all data cleanup is completed and the TAAMS' Title and Realty data is sufficiently verified to allow the Interior defendants to operate TAAMS as an integrated system or record in all Regions?¹¹

- **What have the TIME analyses revealed of the integrity of the data in TAAMS where the system has been populated with the legacy systems' data?**

¹⁰ TAAMS was declared the system of record for current Title in December 2000 in four Regions. There is little proof that all four Regional Land Title Records or Service Offices are actually using the systems data to make reports to IIM account holders and some evidence that only one (Billings) is actually reporting that TAAMS' developed information to IIM account holders. *See* Second Report at 92-93.

¹¹ The most recent projection by BIA for TAAMS' deployment and implementation (that implicitly assumes data cleanup will have provided accurate and complete data to support TAAMS as a system of record) was 2004. *See* Second Report at 8.

To determine the present status of BIA Data Cleanup, the Court Monitor carried out a series of interviews of BIA data cleanup personnel, OST personnel, and DataCom employees. The Court Monitor also attended a Tuesday, August 28, 2001 BIA Data Cleanup Meeting called by the BIA Data Cleanup Subproject Manager and attended by BIA managers and data cleanup personnel from ten Regions, DataCom employees, and the new OST Executive Director of Trust Funds Systems and Projects, OST, as well as EDS personnel. Finally, the Court Monitor attended a BIA TAAMS' briefing for both House Resources Committee and Senate Committee on Indian Affairs staffers in Billings, MT on Wednesday, August 29, 2001 that included a visit to and briefing about the Rocky Mountain LTRO.

A. BIA Data Cleanup Background Issues

Prior to a discussion of the status of BIA data cleanup in each Region, a number of issues regarding the reasons for that status need to be addressed.

The original plan of the Interior defendants was to contract with DataCom to establish a central office to direct and conduct data cleanup by using traveling contractor teams and locally hired personnel. However, it quickly became apparent to the BIA Regional Directors and LTRO managers that DataCom personnel did not have the experience or training with BIA title or realty data and BIA trust operations to direct the data cleanup project. Subsequently, at the direction of the TAAMS and BIA Data Cleanup Project Manager, Dom Nessi, DataCom changed its operational methodology creating a support facility for the Regional Directors whose personnel took over the active management of data cleanup in their Regions. DataCom is presently tasked by the Regions to carry out specific data cleanup projects for each Region. Some use DataCom extensively to conduct data cleanup related tasks or to supplement their own staffs. Others use them more sporadically. One, the Eastern Oklahoma Region, has not used them at all.

DataCom has not had and does not have the authority to prioritize the projects that they are given or to decline to carry out a project in one Region that they may feel is less urgent than another in a sister Region. Nor do they have an overall familiarity with the status of the Regional data cleanup efforts carried out by the Regions' own staffs.

There has been no central authority directing the Regions on the tasks that should be given to DataCom and in what priority they should be accomplished. DataCom receives little or no direction from the BIA Data Cleanup Subproject Manager who is not, in all cases, familiar with the Regional data cleanup personnel's needs for DataCom's services.

DataCom had not initiated data cleanup of realty records by the time that Nessi changed the TAAMS' deployment schedule from developing both Realty and Title modules to only testing and implementing the current Title module in Billings. By the time DataCom had made an initial assessment of the Regions' data cleanup requirements, facilities and resources, Nessi instructed them to concentrate their

data cleanup efforts on title records and forego any other data cleanup. Other than where they are currently collecting or encoding hardcopy records into TAAMS and during the Billings pilot, they have not and are not engaged in any data cleanup activity regarding the realty hardcopy or IRMS electronic data records.

There have been a series of BIA Data Cleanup Subproject managers since the subproject's initiation; none of whom gained an overall familiarity with the Regions' data cleanup needs or remained long enough in this position to become knowledgeable of the national scope of the data cleanup management and resource problems. The present BIA Data Cleanup Subproject Manager began his duties in the spring of 2001 when the subproject was moved from control of the TAAMS Project Manager to the BIA Office of Trust Responsibilities. The August 28, 2001 Data Cleanup Meeting was called by him in order for his staff to gain familiarity with the status of data cleanup in each Region. Prior to his appointment, several key data cleanup managers at the Regional level have been allowed to provide advice and direction to other Regional data cleanup personnel in the absence of qualified BIA headquarter's personnel capable of providing this direction.

Due to TAAMS' software problems and the speed at which Nessi attempted to implement TAAMS in 1999, the data cleanup managers were never given clear standards on which to base data cleanup specifications. As TAAMS failed its user acceptance tests and was again and again modified, existing data cleanup guidelines would be altered or deleted and new ones added.

According to BIA data cleanup personnel, there is a critical shortage of trained personnel available in many Regions to carry out their regular trust duties and also function in one or more HLIP subproject capacities including data cleanup. Resources and facilities have been requested over the years and not provided in sufficient quantity to carry out the tasks assigned within the given timeframes or at all. BIA has imposed unrealistic schedules for data cleanup on them over their strenuous objections.

The information on the data cleanup overview included in the body of the BIA Data Cleanup chapters and, in the last two Quarterly Reports in their Appendixes, is, for the most part, the progress of *DataCom* on the individual tasks it performs for each Region. The Charts in the last two Quarterly Reports are those provided by *DataCom* regarding its tasks' status. The BIA Data Cleanup reports have not addressed the activities of the local BIA data cleanup personnel and do not provide an accurate or complete picture of what the overall status of data cleanup is in any Region. There is no report other than a monthly *DataCom* report of its activities that provides the current status of data cleanup in each Region on which the BIA Data Cleanup Subproject Manager; the BIA Deputy Commissioner; the Assistant Secretary of Indian Affairs; the Special Trustee; or the Secretary of the Interior, can rely.

There is a question regarding the location of the documents that will have to be

encoded into TAAMS. The HLIP's Records Management Subproject requires the collection of hardcopy records maintained at the Regions and Agencies for inventory and storage in Federal Records Centers in Albuquerque or Kansas City. As few of the realty records in the field have been gathered and encoded into TAAMS, there is the possibility, unconfirmed by the Court Monitor's interviews, that a portion of those records no longer are located in the Regions or Agencies and will have to be tracked to the various Federal Records Centers where they presently reside. If they are capable of location, there is also the concern in the field of the manner in which they may have been stored which could have possibly compromised the integrity or order of filing of the documents. This would lengthen if not totally frustrate the task of encoding these documents.

Seventy-five percent of the remaining data to be entered into TAAMS will have to be encoded from hardcopy records.

B. Regional Status of Data Cleanup

The following summary of the status of data cleanup in each Region is based on the presentations made by data cleanup personnel at the August 28, 2001 Data Cleanup meeting and from individual interviews with selected BIA and DataCom data cleanup personnel. They are incomplete in part because these BIA managers, employees, and contractor personnel were not aware of specific data cleanup details and were not at a point in their own operations sufficient for them to provide an overall assessment of, and completion dates for, data cleanup.

Billings (Rocky Mountain Region): This was the first Regional TAAMS system to have data converted into it due to its early pilot status. Both the LRIS (Title) and IRMS (Realty) data have been converted into TAAMS. This includes the data for the Agencies in the Region. Efforts are ongoing by DataCom to match tract information between the Title and Realty modules as well as eliminate multiple IDs for owners contained in both systems. Title Status Reports are provided IIM account holders using the current Title data in TAAMS. There has been no attempt to bring the Title history data on line to augment the current Title data due to the May 2001 Integrated User Acceptance Test (IUAT) that revealed that history Title data corrupted the current Title data. Realty information is not used by the Region's agencies in their daily operations pending the TAAMS' Realty module's approval following further user acceptance testing. The system's electronic data has not been subject to a TIME integrity analysis since DataCom conducted the initial LRIS and TAAMS' TIME assessment in 1999-2000 at Billings.¹²

Juneau (Alaska Region): The majority of hardcopy data in Alaska was never placed in the legacy systems. Therefore, the Interior defendants tasked DataCom to copy all hardcopy records regarding 18,000 tracts of land, certify them, and encode the verified information into TAAMS. That process has been ongoing for one and

¹² See the discussion of this TIME test of Rocky Mountain Region (Billings) TAAMS' data at pages 25-29 of this Report.

one half years. All hardcopy data has been copied and, as of this date, approximately 5% of the data has been encoded into TAAMS. The records' copying took two and one half months. The balance of the last year and one half has been spent on title examination and encoding the hardcopy documents into TAAMS.¹³ The encoding has been into the Title module and has included ownership information from leasing documents. It is the understanding of DataCom personnel from discussions with the TAAMS contractor, ATS, that this data will be usable by the Realty module when it is certified as the system of record following further user acceptance tests.

DataCom has been engaged with BIA managers in determining a faster method for examining and encoding the hardcopy records in light of the fact that at the present pace it would take them over 20 years to encode the data. Seventeen to 24 personnel have been involved in the project and have averaged encoding documents regarding one tract per day. They have projected that with additional training and perhaps as many as 25 fulltime personnel, they could increase tract document encoding from one tract a day to 25 tracts a day thus shortening the time to completion of the TAAMS encoding for the Alaska Region.¹⁴

Aberdeen (Great Plains Region): The Great Plains Region is also carrying out data cleanup for the Midwest Region (Minneapolis). No data has been entered into TAAMS. There is, in the words of the Midwest Region data cleanup representative, a huge backlog of hardcopy documents that were never entered into the legacy systems. IRMS was never used in these Regions. A separate computer system used at each reservation called MAD is in use in these Regions. But the ownership data in LRIS does not match the data in MAD. Also, when the data was entered into LRIS, it did not go through a cleanup process and will require an extensive cleanup before conversion if that is even possible.

There are different methods used to place and store data in the MAD systems. The Region is attempting to download all the information in LRIS and the MAD systems to compare it and convert it to the LRIS format before they can begin to enter it into TAAMS. But they have not started to draft conversion plans. Nor have they been trained on TAAMS and its requirements. They are not capable of systematically cleaning up the data. No policies have been put in place to guide the major project needed to eliminate the different ID numbers for the same tract of land found throughout the systems.

A request for additional staff (up to three times the staff is estimated to be needed in the Standing Rock Agency) was made at the Data Cleanup Meeting due to the

¹³ Delay was also caused by the TAAMS system's instability and the need to develop standard business practices to enable encoding..

¹⁴ This projection would seem overly optimistic and is the basis for the BIA TAAMS Project Manager's repeated assertion to the Court Monitor that TAAMS will be operational by 2004. It is projected that, with the revised method of operation, DataCom can complete this huge task by that year. This is based on an assumption since the method has not been tested nor has DataCom been able to sustain such a pace. And if they are tasked to encode the Eastern Region data during this Alaska encoding, they may not be able to sustain their current pace of one tract a day. See Nashville (Eastern Region) discussion, pages 25-26 of this Report.

amount of hardcopy documents and the additional projects that the Region faces. These projects include the *Youpee* pilot project involving the identification and purchase of fractionated land tracts. There was no available estimate of when this Region's data cleanup could be completed.

Southwest/Navajo/Western Regions: The Albuquerque Regional office handles data cleanup for all three of these Regions.

Navajo Region - The Navajo Region has an IRMS system but the Albuquerque Regional LTRO handles their title operations and manages their LRIS. They have not begun data conversion into TAAMS. They may not be able to convert IRMS' data directly into TAAMS. They may need to gather the hardcopy records to encode them into TAAMS. They do not know how many records this may entail and have not begun to collect them. They cannot determine whether the IRMS' data is capable of electronic conversion because only one Region has received the "anomaly reports" that will be used by them to determine the integrity of the data in IRMS.

Years ago, when the IRMS system was first introduced, the Region was given only three months to convert or encode the existing electronic data and hardcopy records into this system. There is little chance that the IRMS data will be in a state capable of direct conversion into TAAMS or that TAAMS would be capable of cleaning up the data once converted. There are approximately 4700 tracts of IIM account holder land in this Region that will require encoding. There is no estimate available of the size of the hardcopy document backlog to forecast a date for completion of this encoding into TAAMS.

Western Region – The Albuquerque LTRO handles title administration for the Western Region and maintains their LRIS system as well as the hardcopy documents backing up the system. IRMS is present in the Western Region but was never used. Most of the thirteen Agencies under the Region manually handle their realty data. There are a plethora of hardcopy records that will need to be gathered to encode into TAAMS. No estimate could be given of the numbers or the time to accomplish this project. No data has been encoded or converted into TAAMS. The LRIS system is believed to be capable of converting data into TAAMS but no TIME test has been completed to determine the accuracy of the data in LRIS.

Southwestern Region – There have been problems with both the LRIS and IRMS systems in Albuquerque due to telecommunications issues between the Region and its Agencies. As a result, neither the Region nor its nine Agencies have used IRMS. Therefore, realty data for all agencies will have to be manually encoded into TAAMS. They have not been able to find all of the data that was once put into IRMS. The Region uses LRIS for both current Title and Title history. There is a level of confidence about the integrity of the LRIS data due to its daily use but there have been no results reported about the first TIME test of LRIS. Also, the TAAMS priorities and requirements have changed so many times that there is a major

question as to whether the data, which is probably accurate, will convert correctly into TAAMS.

Portland (Northwest Region): There has been no data entered into TAAMS. They do not have sufficient examiners and trained personnel to carry out data cleanup. LRIS and IRMS were used in this Region but the formatting was different and the anomalies between the systems must be cleaned-up prior to any data conversion into TAAMS if that is even possible.

Sacramento (Pacific Region): This Region did not have the IRMS system. It did have the LRIS system but the data was entered in such a fashion that they believe they will have to encode the hardcopy title data into TAAMS. Two agencies lost title history data in attempting to convert LRIS data to TAAMS. History is now being prepared to enter manually into TAAMS. To recreate the lost history through hardcopy records will take up to 25 months for just the missing data. The project is going very slowly because of the lack of sufficient qualified personnel to accomplish it. There has been no study done of how long it will take to enter all data into TAAMS. The Regional data cleanup representative stated the 2004 completion of the TAAMS and data cleanup project was a milestone imposed from above the Region and not the result of any estimates provided its personnel.

Anadarko (Southern Plains Region): LRIS current Title has been entered into TAAMS but not cleaned up. It was estimated that it will take four years to do the LRIS data cleanup. Title history has not been converted. Realty data cleanup started in September 2000. The system that had been used in Anadarko was “home grown” and not IRMS. However, it is expected to mirror LRIS ownership records. There has been no conversion or encoding of realty data into TAAMS. A major difficulty with proceeding with data conversion is that Region data cleanup personnel have not seen the TAAMS system to know “where they are going.” Nor have they had any BIA level supervision to tell them what to do to mirror what other Regions are doing. However, they do not plan to wait for DataCom’s assistance to begin the data conversion process.¹⁵

Muskogee (Eastern Oklahoma Region): This Region never had LRIS or IRMS. Hardcopy data is being entered manually into TAAMS. But the hardcopy records on which this encoding is based are kept in the county courthouses and there are 37 courthouses that must be researched to identify the documents to encode into TAAMS. The Region does not have a current version of the TAAMS software and no personnel to operate it. The total number of tracts for which hardcopy documents will have to be located are unknown. They do not know whether they will be expected to put the oil and gas leases into the system or whether the Osage tribe will be part of the data cleanup process due to its particular legal status. The Regional data cleanup representative requested that qualified management be

¹⁵ This is one of the four Regions, besides the Rocky Mountain and Alaska Regions, where TAAMS was declared a system of record for current Title in December 2000.

brought in to tell them what to do.¹⁶

Nashville (Eastern Region): The Eastern Region is composed of 23 Agencies. They have no LRIS or IRMS legacy systems. The Southern Plains Region has been designated to develop the Eastern Region's LTRO. All data will have to be gathered in hardcopy form and directly encoded into TAAMS. DataCom is in charge of this data cleanup project. They are still gathering hardcopy documents and microfiche from the Cherokee agency. They have not begun document collection in any other Agency. They have been working on the Cherokee agency's document gathering project for one year and four months. They estimate they will complete this first document recovery by March 2002. They are unsure whether to continue with the hardcopy data location and cleanup in the other agencies or revert to encoding the Cherokee data into TAAMS. They have sought guidance from BIA without response. They have not begun collecting realty records from any Agency.

A rough estimate of the time to complete just the recovery of the title documents from the remaining 22 agencies without additional resources for DataCom or the agencies in this Region would be over 40 years. Assuming no other agency has as many documents as the Cherokee agency and the staff can be doubled, the figure is still most likely over ten years. Considering that DataCom's encoding operation in the Alaska Region may well take ten years without additional staffing, the completion of just the title records collection and encoding in the Eastern Region, without major restructuring of this project, will at least double that ten-year figure.¹⁷

C. TAAMS Information Migration Evaluations (TIME) Project Status

Throughout the record presented in this Report, the Interior defendants have stated that a key factor in whether trust reform can be adequately carried out will be based on the data cleanup effort. As this Court recognized, "it depends on data cleanup, doesn't it?" Trial Tr. at 3118. But the success of the data cleanup project does not end with the conversion or encoding of the legacy systems' electronic data or hardcopy records into TAAMS. "Garbage in" will mean "garbage out." The data must be accurate, complete, and usable. Its integrity must be verified based on the hardcopy historical records from which the data was first derived and either put in the legacy systems and converted to TAAMS or directly encoded into TAAMS from these hardcopy records. The Interior defendants recognized this overarching requirement and sought to have DataCom carry out integrity tests on that data in LRIS and, once converted or encoded, in TAAMS. What is the status of that project and how good are the results of the tests?

The Quarterly Reports have noted or DataCom personnel have stated to the Court

¹⁶ This is the fourth Region where TAAMS was declared a system of record in December 2000.

¹⁷ An additional problem that has not been addressed is that where title history in the Alaska Region only goes back 30 years, the Eastern Region has allotments that were recorded over 100 years ago. The title history-encoding project will take much longer to copy, examine, and encode the documents than Alaska.

Monitor that TIME tests have been or are being conducted on samples of electronic TAAMS or LRIS data in the Rocky Mountain, Great Plains, Southern Plains, and Northwest Regions. To determine the status of these tests, DataCom personnel were interviewed and supplied oral and written information about these tests.

The original purpose of the TIME tests was to:

“...access the accuracy of the legacy systems conversion into TAAMS as well as the accuracy of the data in the legacy system itself. The BIA and DataCom TAAMS Information Migration Evaluation (TIME) project identifies the data accuracy, completeness and timeliness levels at a sample of BIA sites.” See Tab 2D at 9.

An initial TIME test was carried out on TAAMS current Title data in the Rocky Mountain Region in the summer and fall of 2000 following population of the system with the LRIS electronic data. The report of this test or “assessment” is at Tab 4A.

The findings of this report are at pages 6 to 7 and the document error assessment is at page 8 to 11. The error rates provide the most revealing assessment of the status of data integrity in the Rocky Mountain Region’s TAAMS system as of the fall of 2000 just prior to the Deputy Commissioner of Indian Affairs designating it as a system of record in December 2000¹⁸.

- Of the 541 current ownership documents assessed, 7.8% had at least one data entry error when entered into LRIS.**
- Conversion errors in converting the data from LRIS to TAAMS were found in 52.5% of the documents.**
- There were both entry and conversion errors in 22.3% of the documents.**
- There were 18 missing documents or a 3.3% percentage of the total.**
- Documents with one or more errors of any type totaled 465 or 85.9% of all documents tested in TAAMS.**
- Data entry errors – data incorrectly entered into LRIS – totaled 30.1%.**
- Data converted from LRIS into TAAMS had an error rate of 405 or 74.8%.**

Only 14% of the documents had no errors of any sort. *Id.* at 8-9.¹⁹

The results of this test caused the TAAMS and Data Cleanup Project Manager, Dom Nessi, to alter the testing protocol and eliminate further testing of data conversion from LRIS to TAAMS. He also directed that further TIME tests only evaluate hardcopy encoding into LRIS and the integrity of the electronic data in LRIS. According to DataCom, Nessi felt that the TAAMS software conversion module was not sufficiently developed to test the conversion of LRIS data into the TAAMS current Title module based on the results of this one TAAMS’ TIME

¹⁸ See Second Report at 92-93 and **Tab 10G** of that report.

¹⁹ Of interest, a non-mandatory element error found in this test was that the LRIS current and history data did not agree. *Id.* at 10. This was a major finding in the IUAT conducted approximately six months later on TAAMS and should have been recognized by the TAAMS Project Manager and ATS and addressed prior to the IUAT.

assessment. Also, according to DataCom managers, Nessi directed that the results of this TAAMS assessment were not to be published or disseminated.

The Rocky Mountain LTRO manager, who was intimately involved with the TAAMS' pilot development, testing, and data conversion, was not provided with a copy of these results nor was he aware of this assessment until the Court Monitor gave him a copy of the assessment report on August 30, 2001. He has vigorously defended the integrity of his TAAMS' electronic current Title data. He has challenged the results of the TAAMS TIME assessment, upon learning of it, based on his own knowledge of his systems' data and data conversion and his belief that the DataCom personnel were not sufficiently familiar with title documents and operations to carry out these tests.

Given the opportunity to respond to the TIME results on the Rocky Mountain TAAMS' TIME assessment, he submitted a letter to the Court Monitor highlighting the mistakes made by DataCom personnel in their testing and analysis of the data from the TAAMS system. The statement in the last two paragraphs of this September 7, 2001 nine-page letter (Tab 4B) summarizes the overall assessment of the report by the LTRO manager and others:

“Our general opinion of the TIME report is that it does not assist our cleanup or conversion efforts in any way shape or form....

In defense of DataCom, they were given an undefined task by a previous TAAMS Project Manager in an attempt to satisfy our concerns about verification of the conversion of the LRIS data in the Billings LTRO. The task appears to have changed from the initial assignment they were given. They did not receive the proper initiation or training needed to make evaluations of title data or the two automated systems” Their company does have experience with data however it does not appear that they (have) any title experience in the trust or non-trust world, outside of this contract.... The TIME project was not fair to them and so far it has not assisted us.”

But if DataCom personnel were not competent in the fall of 2000 to carry out these tests are they now? Will the results of their subsequent assessments have any integrity on which the BIA Regional Directors and managers can base their data cleanup plans and determine the integrity of the electronic data in either the LRIS or TAAMS systems?

Had the Rocky Mountain LTRO manager been given this assessment at the time it was completed, he could have provided these comments to DataCom and BIA and their procedures and training could have been improved, it, as he believes, they did not have the experience to properly perform the tests. But the TAAMS Project Manager did not provide it to him or anyone. So DataCom has been operating without the advice and assistance of those trained and experienced LTRO managers who participated in the first and only completed TIME assessments in the Rocky Mountain Region. The managers have proceeded with data cleanup and LRIS and TAAMS encoding and conversion activities without knowledge of either their

systems' possible error rates or that DataCom personnel were not trained sufficiently and still may not be properly conducting the tests.

There has not been a repeat TIME assessment of LRIS electronic data conversion into TAAMS since this test in the Rocky Mountain Region or anywhere. Therefore, there is no valid baseline for determining whether the data currently in TAAMS in the Rocky Mountain Region has been cleaned-up and converted to the point where it can accurately report on title information.

There was an LRIS' TIME assessment done at the Rocky Mountain Region at the same time as this TAAMS' TIME assessment. DataCom published the results of that test (Tab 4C) that are also consolidated with the TAAMS' TIME report and were reported in the Second Quarterly Report.²⁰ The assessment of LRIS data was not much better than the TAAMS conversion data assessment. However, during his interview, the LTRO manager repeatedly emphasized he was confident this LRIS data had a high level of integrity.²¹ He also addressed his impression of the personnel who did both the LRIS and TAAMS data tests in his letter:

“In my estimation the findings associated with the TIME project are worth evaluating however, in light of DataCom's confusion with mandatory elements identified above the findings are not an accurate assessment of the data in LRIS or the conversion of that data to TAAMS. It is not my intention to insult anyone by this response to the TIME report but to the best of my knowledge, the expertise of the DataCom staff associated with the TIME project did not include any individuals who had experience with trust or non-trust land title. From the moment they arrived in Billings in the spring of 1999 we realized that they had little or no experience with real estate or land title and that if we were going to get any assistance from them, we had to train them. With that being said, DataCom's assessment of the extraction of the Information from the sample documents (legal instruments) and the encoding of that information into LRIS are also not an accurate assessment of the data in either system. *Id.* at unnumbered pages 3-4.

LRIS' TIME assessments have been started or are contemplated for the Southern Plains, Northwest, Great Plains, Pacific and Southwest Regions. No other TIME test has been completed and published documenting the degree of the integrity of LRIS electronic data, the capability of that data to be accurately converted into TAAMS, or the accuracy and completeness of the data in TAAMS current title.

There is no certainty that these tests, when completed, will exhibit any higher level of data integrity in LRIS and TAAMS than the Rocky Mountain Region 2000 assessments. Nor is there anyway of ensuring that those tests are themselves accurate. Data integrity remains a major unknown for those LRIS and TAAMS systems that have been populated with data through hardcopy encoding or

²⁰ See this Report at 15.

²¹ Of interest, part of the basis for this confidence was that the data entry into LRIS was carried out by an independent contractor with an understanding of title operations and data and not the TAAMS' contractor, ATS.

electronic conversion to include BIA's much-ballyhooed Billings TAAMS pilot.²²

III. QUARTERLY STATUS REPORT TO THE COURT NUMBER SEVEN

A. The Interior Defendants' Motion For An Extension of Time

During the preparation of this Report, the Interior Defendants filed a motion with this Court on August 31, 2001, entitled, "Interior's Motion For An Extension Of Time To File Its Seventh Quarterly Report." An exhibit to that motion was that Quarterly Report. Included in the Quarterly Report were the customary Special Trustee Observations (Tab 4D) and the BIA Data Cleanup and Management chapter (Tab 4E).

The stated necessity for requesting additional time to file the Quarterly Report was the Special Trustee Observation paragraph that stated:

"The Special Trustee is not satisfied with the completeness or the quality of the information provided in this quarterly report. As our investigations are carried further and we receive the analyses from EDS of all subprojects, we will implement changes to this report designed to improve the format, completeness, and content of future quarterly reports." *Id.* at 6.

Also included with the motion was a memorandum from the Secretary of the Interior to the Special Trustee dated August 29, 2001 and entitled, "Seventh Quarterly Status Report to the Court" (Tab 4F). She directed the Special Trustee to provide her by close of business on September 8, 2001 a detailed explanation of his concerns regarding the deficiencies in the Quarterly Report. *Id.*

The Interior Defendants also provided the subproject managers with the "opportunity" to certify the information provided in the Quarterly Report. The BIA Data Cleanup and Management Subproject Manager provided that certification (Tab 4G). Therefore, it would not appear necessary to wait for the final version of the Quarterly Report, Chapter 2, to address it in this Report, as it has been certified as complete and accurate.

B. The Data Cleanup and Management Chapter

That report begins with a new "Summary of Milestones Due This Quarter." It states:

²² Having spent over a day in briefings and interviews with the Rocky Mountain Region's LTRO manager and his staff, as well as meeting with the Regional Director, it is the opinion of the Court Monitor that the high level of expertise, leadership, and commitment of these men along with the dedication of their staffs would augur well for the *potential* that the data in their TAAMS and LRIS systems and hardcopy backup is as accurate and complete as they attest. However, the integrity of that data has been placed in doubt by the DataCom TIME tests - one of which was never shown to these managers - as have the competence of DataCom assessment personnel and the integrity of their past and future TIME tests been compromised by the letter response and criticisms of these same managers.

“The only remaining milestones for the BIA Data Cleanup and Management subproject are those considered “ongoing.” *Id.* at 11.

Apparently, there has been no consideration given to defining when any of the data cleanup Regional projects would be finished. So for the future of data cleanup, there will be no milestones to be met or compared to actual performance.

A new revised data cleanup strategy has been developed. Site-specific plans will be developed and data cleanup priorities identified. However, there is mention that the Special Trustee has contracted with EDS and appointed an Executive Director for Trust Systems and Projects to review the BIA Data Cleanup subproject and, parenthetically, make recommendations to the Secretary of the Interior on what that strategy is and/or should be. *Id.* In other words, whatever the new revised strategy might be (it was not described), it will not be implemented any time soon. The plans for it have not been prepared. It may never be implemented depending on the Special Trustee’s and EDS’ present review and the Special Trustee’s later recommendations and/or decisions about future data cleanup management and strategies.

Another new statement found in the chapter under “Data Cleanup Overview By Region,” was the following:

“The exact status of the BIA Data Cleanup and Management, including work performed by BIA personnel, will be in the next quarterly report.” *Id.* at 13.

If the Secretary of the Interior was concerned about why the Special Trustee was not satisfied with the completeness or the quality of the information provided in this Seventh Quarterly Report, she need only have read this one statement. In promising to provide in the *next* report the *exact data cleanup status* and the work performed by *BIA personnel*, the subproject manager admitted that the *previous* six Quarterly Reports had not provided that “exact” status and had only reported what DataCom had accomplished with the tasks assigned to its personnel. The Quarterly Reports left out everything else done by the BIA data cleanup personnel that might have given some indication to this Court of the actual status of the subproject. In this one sentence the subproject manager confirmed that all the previous Quarterly Reports (and this seventh Quarterly Report) had failed to provide a truthful, accurate and complete picture of the status of data cleanup.

The seventh Quarterly Report had also been prepared to report on the DataCom tasks and not the entire BIA data cleanup effort without mentioning that fact. No data cleanup time-to-completion or percentage completions were provided in this report. *Id.* at 13-14.

The individual statements in this report about data cleanup may be literally true on their face. However, the report is as misleading as the past six BIA Data Cleanup reports. These reports, as the subproject manager stated, did not reveal any hint of

the exact status of data cleanup or what the BIA personnel had or had not accomplished. However, that “exact status” and the activities of the BIA data cleanup personnel were painfully apparent in the August 28, 2001 Data Cleanup Meeting presentations discussed previously.

There is little wonder that the Special Trustee added his final paragraph to his Observations in the Seventh Quarterly Report. His recently appointed Executive Director for Trust Systems and Projects and the EDS contractor’s representative were present and heard those Data Cleanup Meeting presentations. While she and EDS have yet to interview the data cleanup Regional representatives to determine the exact picture of data cleanup, what they heard they knew they had never seen in any Quarterly Report. The Executive Director was involved in the review of the Seventh Quarterly Report and would have reported to the Special Trustee that it, like its predecessors, was, in total, inaccurate, unclear as to the status of data cleanup, and dissembling for what it did not reveal that was known or could have been determined by BIA senior managers for months if not years previous to its preparation.

H. The Special Trustee’s Response to the Secretary of the Interior

The Special Trustee responded to the Secretary of the Interior on Monday, September 10, 2001 in a memorandum to her entitled, “Seventh Quarterly Status Report to the Court” (Tab 5A). The Special Trustee stated that, since assuming responsibility for compiling the Quarterly Reports starting with the third Quarterly Report, he had noted a number of concerns about specific areas of trust reform in his Observations to these Reports and added that:

“Many of those concerns were expressed in terms of the serious and complex management problems faced by the Department. These concerns included, but are not limited to, the inability of the BIA subproject manager to obtain meaningful metrics to measure the progress of the BIA data cleanup effort and the continued failure of TAAMS to operate in an acceptable manner. The delays in some critical subprojects suggest that those people involved in those projects do not have or cannot get or will not acknowledge an accurate description of problems present in the projects. Therefore, the problems are either not addressed or addressed ineffectively. The successful reform of the Department’s Indian trust asset management process depends on the objective analysis of the process, the candid communication of the results of that analysis, and the firm commitment to reshape the process where necessary.” *Id.* at 1.

The Special Trustee recounted those concerns by adding as attachments to his memorandum his previous Observations in the first six Quarterly Reports along with those in the Seventh Quarterly Report. He also provided some examples of the reasons for his concerns about the subproject reports at Attachment 2. At page 4 of this attachment he provided two charts his staff prepared based on the BIA Data Cleanup information placed in the last three Quarterly Reports. His staff’s analysis of those reports enabled him to report to the Secretary that:

“The original charts (not shown here) were placed in the report in response to my efforts to get BIA to provide performance metrics for BIA Data Cleanup.

*These charts represent only the work accomplished by DataCom, The BIA contractor, and show no work performed by BIA staff. Therefore, this information is not comprehensive in scope.*²³

There is no consistency in the information reported within the same region from one quarter to the next quarter. Moreover, there is no consistency between any two regions in the information that is provided in the report. These inconsistencies are inexplicable.

For the 7QR, after weeks of negotiations and rework, the charts have been eliminated. My report team could not reach agreement with BIA on the content and format of the charts.”
Id., emphasis added.

On the following page, the Special Trustee reported to the Secretary his concern about one element of TAAMS that related directly to BIA Data Cleanup by confirming a previous discovery of the Court Monitor.²⁴

“Alaska Region has been reported as one of the regions where TAAMS title is the system of record. But the data belies this report. In fact, as of the end of the 7QR reporting period, only 478 of the over 18,000 tracts have been certified in TAAMS. At the current rate of completion, it will take years to bring the Alaska Region into an operational state with TAAMS title. The information reported by the subproject manager, while factually correct, is not a comprehensive statement of the capability.

In the current HLIP, TAAMS has 24 milestones, of which 19 are completed, one is an ongoing milestone, and four are “to be determined” status. If one were to use the record of published milestones completions, then TAAMS would be almost completed. This stretches credibility. Obviously additional milestone and project planning is required.” *Id.* at 5., emphasis added.

V. CONCLUSIONS AND DISCUSSION

A. The BIA Data Cleanup Subproject Is At Risk Of Delaying Trust Reform and TAAMS Implementation Far Beyond Any Date The Interior Defendants Have Announced

On June 11, 2001, during the GAO briefing of the Special Trustee about the status of TAAMS, the GAO representatives opined that TAAMS might have to be abandoned and a new system developed from scratch. They tempered this news with what they perceived as a positive statement – the status of data cleanup and the

²³ The Special Trustee’s staff determined this independently of the Court Monitor thus confirming the Court Monitor’s own discovery of this fact.

²⁴ See page 22 of this Report.

remote date for its completion would give the system developers time to reengineer the computer system without delaying trust reform. *Data cleanup was further behind in execution than was the TAAMS' deployment.*

Once again, the GAO may have been correct in their assessment of the status of trust reform. The record speaks for itself. The BIA Data Cleanup subproject is in disarray. Its status was eloquently addressed by the individual data cleanup representatives at the Data Cleanup Meeting on August 28, 2001 and does not need further repetition here. One example will serve for many. In one and one half years, only 5% of the documents representing the 18,000 Alaska Region land tracts of IIM account holders have been manually encoded into TAAMS. An average of one tract per day is input into TAAMS. Approximately 75% of the data that must be input into TAAMS throughout the Regions will require manual encoding from hardcopy records. The math speaks for itself.

There is also no present assurance that the data that has been converted or encoded into TAAMS is accurate or has the degree of integrity necessary to provide meaningful reports to BIA users and IIM account holders. There have been only two completed TIME reports of the Rocky Mountain Region's TAAMS and LRIS electronic data integrity tests. Those tests or "assessments" showed a large percentage of data entry errors in LRIS from the hardcopy data entered into it and in the electronic data converted from LRIS into TAAMS. The TIME tests themselves have been subjected to severe criticism due to the Regional managers' analysis of the both the LRIS and TAAMS tests and their concerns about the competency of the DataCom assessment personnel.

The BIA has reviewed and abandoned the 1999 data cleanup strategy presented to this Court at trial and on which this Court, in part, based its December 21, 1999 decision. The new strategy, whatever it is, may not be implemented depending on the outcome of the Special Trustee's and his management consultant's review of the trust reform subprojects in general and Data Cleanup specifically. His recommendations to the Secretary of the Interior may involve starting over with a new management strategy and data cleanup plan.

Without a major reorganization of the BIA Data Cleanup subproject including adding experienced management; communication and chain of command structures; trained personnel; additional facilities and resources; data cleanup and trust reform have no hope of near term completion.

B. The Interior Defendants' Quarterly Reports Have Consistently Failed to Provide This Court With A Truthful, Accurate, And Clear Picture Of The Status Of BIA Data Cleanup

The certified statement of the subproject manager in the BIA Data Cleanup and Management chapter of Quarterly Status Report to the Court Number Seven bears repeating:

“The exact status of the BIA Data Cleanup and Management, including work performed by BIA personnel, will be in the next quarterly report.” *Id.* at 13.

That exact status of data cleanup has never been provided to this Court in the Quarterly Reports.²⁵ The first TAAMS and BIA Data Cleanup Project Manager, Dom Nessi, and the Special Trustee, beginning with his Observations in Quarterly Status Report to the Court Number Three, have sent warning signals of the difficulties and challenges presented by data cleanup. But the BIA subproject managers and senior management have either failed to understand the true status of data cleanup operations or, more likely, have sought to avoid reporting it to their superiors and this Court.

It is likely that the present Deputy Commissioner’s belief in the “long history of conflict between OST and BIA over the criticism leveled at BIA by OST that BIA was not performing trust reform operations...efficiently,”²⁶ contributed to this reluctance of her and her predecessor’s subordinates to be forthcoming in the Quarterly Reports about data cleanup problems.

The Quarterly Reports’ BIA Data Cleanup And Management chapters have done no more than address individual tasks mainly performed by the DataCom subcontractor. Progress could be shown in their reports including the charts found in the appendixes of the Fifth and Sixth Quarterly Reports. Percentages of completion listed for the tasks gave a false sense that *BIA data cleanup personnel* were making considerable progress. But it was not reported that only *DataCom* was making progress on their individual tasks. By this method of reporting, BIA intentionally failed to address its Regions’ massive hardcopy record backlogs, inoperable legacy systems, and data conversion and hardcopy encoding problems.

No less an authority than the Special Trustee, upon the inquiry of the Secretary of the Interior, has now attested to the reality of this lack of truthful, accurate and complete reporting by BIA senior management with regard to the BIA Data Cleanup subproject in particular and trust reform in general.

C. There Is Little Or No Possibility That A Significant Delay In BIA Data Cleanup Impacting Severely On Trust Reform Can Be Avoided By The Interior Defendants And The Special Trustee Under The

²⁵ So also, the “exact status” of the TAAMS’ current Title module’s deployment as an operational system of record as announced by the Deputy Commissioner of Indian Affairs in December 2000 has never been accurately reported in this administration’s Quarterly Reports Number Five, Six and, although uncertified, Seven. *See Tab 5B* at 30: **“The TAAMS-s Title Module is operational only in Group A (Rocky Mountain, Southern Plains, Alaska and Eastern Oklahoma) Regions, and the exact status of the four regional offices will be provided in the next quarterly report.”** But as discussed at the Data Cleanup Meeting, in interviews with the Court Monitor, and reported in this Report at pages 21-25, only the Rocky Mountain Region is considered functional enough with converted data (whatever the degree of its integrity) to issue Title Status Reports using TAAMS. Whatever the BIA TAAMS Project Manager and Deputy Commissioner for Indian Affairs have meant by stating that the current Title module was “operational” and a “system of record” in these four Regions has not meant by any objective standard that *any* Region (except possibly the Rocky Mountain Region) could use the TAAMS’ current Title module due to the system’s lack of data or the questionable state of that data’s completeness and integrity.

²⁶ *See* Second Report at 102.

Present Management Structure

Secretary Norton has stated she is doing her best. She has assured the public that her goal is to:

“put together a trust-reform management team and implementation strategy that will meet challenges head-on, solve problems one-by-one and leave a legacy of milestones met and tasks accomplished. It’s a priority of the Bush administration to move Indian trust systems into the 21st century and identify and implement a method to make a historical accounting that will be funded by Congress and is acceptable to the Court.”²⁷

Assistant Secretary for Indian Affairs Neil McCaleb has also spoken of the need for time to address trust reform in discussing the TAAMS subproject:

“It’s a complex system and we haven’t worked out all of the kinks.... We know what needs to be done, we know how to do it and we just need some time.... We just got our hands around this in March, and there’s a lot to do. With new hands on board we’re trying to get the slack out and the sails trimmed and bring this ship into port. We’re gonna fix the problem instead of fight the litigation.”²⁸

Even the minority staff director and chief counsel on the Senate Indian Affairs Committee has called for time:

“The Indians perspective of the administration is that we’ve done little more than shuffle the chairs on the deck of the Titanic. I understand their position. They’ve been through a lot. But everything for this administration has been accelerated, and they’ve had little time to get things going.”²⁹

The major fallacy in these pronouncements is that the Interior defendants *have had* the time to bring about trust reform. The DOI and BIA career senior executive service managers have been in place throughout both the Clinton and Bush administrations and have had the responsibility for all trust reform subprojects including the BIA Data Cleanup subproject. These executives were the decision makers on which strategies to use for TAAMS and BIA Data Cleanup and are the same managers now advising Secretary Norton and her appointees on the options and solutions for overall trust reform. They will be the reviewers and arbiters of the EDS report whatever its conclusions and recommendations regarding data cleanup specifically or trust reform in general. Can there be any more expectation that they will follow the advice of this management consultant or the Special

²⁷ See *InsightMag.com*, “Total Lack of Trust,” dated August 28, 2001, by Kelly Patricia O’Meara.

²⁸ *Id.* The “ship” spoken of by the Assistant Secretary was perilously close to foundering at sea upon the departure of the last administration. There may be new hands on deck attempting to steer it but those below deck repairing the sails mostly remain the same. The Secretary of the Interior and the Assistant Secretary for Indian Affairs have relied on them for their ship’s operations during the stormy last seven months that have concluded with their inability to submit a timely Seventh Quarterly Report due to their subordinates’ questionable statements about the ship’s course and direction.

²⁹ *Id.*

Trustee than they did the GAO's advice on TAAMS?³⁰

Strategies for data cleanup reform must be based on experience and objective analysis of hard facts. The present disorganization and lack of direction within the ranks of data cleanup personnel and the Regional staffs is the direct result of the lack of leadership and experience of the senior management within DOI and BIA. The failure to communicate the dire straits the BIA Data Cleanup project is in has been in no small part due to the reluctance of BIA senior managers to face the expected criticism of the Special Trustee and OST managers or of the IIM account holders, Congress, or this Court. They were not objective in the past in their reporting or assessments of data cleanup problems and the subproject's status and cannot be expected to be anymore willing now to be forthcoming under the present administration that has placed the Special Trustee in charge of trust reform management.³¹

Even the most objective participant – the Special Trustee - due to his Congressional-created oversight role, has been subjected to criticism and obstruction for seeking to place some reality into the Quarterly Reports. When he finally pointed out that the “king may have no clothes” his concerns were subjected to questioning by no less than the Secretary of the Interior's Solicitor at the direction of the Secretary. The Secretary's letter revealed an apparent lack of direct communications with the Special Trustee and confusion about the import of his Observations although she had read the Quarterly Report:

“Since I have not heard from you on this subject prior to my review of the draft (Quarterly Report), I assume that your concerns were of insufficient severity or immediacy for you to recommend a delay in filing the report. If that assumption is incorrect and you believe that the draft report needs to be amended materially prior to filing, we need to know immediately. The Solicitor will call you later today regarding the immediacy of your concerns....³²

If there are weaknesses in the content of our reporting to the Court, please advise me of your recommendations of the actions we need to take. We may need to prepare a supplemental report that would further clarify the status of trust reform for the benefit of the Court.” See Tab 4E.

As the Secretary's counselors are well aware, while the Special Trustee's

³⁰ Recent history has shown these managers have not provided the Secretary or her subordinates with the full story on which to make an informed decision on, at least, the historical accounting. See First Report at 36-42.

³¹ Reference need only be made to the Special Trustee's concerns about the Seventh Quarterly Report and the difficulty the Special Trustee has experienced with the opposition to his Observations in the last three Quarterly Reports. See, generally, Second Report at 84-105.

³² Would it not have been more expedient for the Secretary to meet with her Special Trustee and the Solicitor to learn of those concerns about trust reform operations rather than write him a letter? And why had not the Special Trustee met or talked to the Secretary about his concerns prior to addressing them in the Quarterly Report? What do these letters reveal of the relationship between the two principal officials responsible, as Trustees to the IIM account holders, for trust reform and the support the Special Trustee can expect in directing trust reform operations if his decisions are challenged by BIA?

subordinates *compile* the Quarterly Reports, the Quarterly Reports represent the Secretary of the Interior's own reporting responsibility to this Court. The individual HLIP subproject managers *prepare* these reports based on their knowledge of the status of their individual subprojects.

Since the Secretary's Memorandum and Order granting the Special Trustee additional authority over trust reform in July 2001, he has taken action to begin the review of the status of trust reform with management consultant help. However, he has just recently begun this project. It is not he who could most effectively answer the Secretary's questions about the true status of the TAAMS, Probate, and Data Cleanup subprojects. It is the BIA subproject managers who have the information on which a true picture of trust reform progress regarding these subprojects could have been provided to the Secretary.

The Assistant Secretary for Indian Affairs and the Deputy Commissioner would be the more appropriate officials for the Secretary to write to and her Solicitor to call about where trust reform stands at this point in time. Whether these officials' inquiries of the BIA subproject managers would result in an accurate picture for the Secretary of the status of TAAMS, Probate, and Data Cleanup should be the focus of concern and investigation.

The Special Trustee's reply to the Secretary has now outlined some of the reasons for his concerns including his recognition of the misleading information in the BIA Data Cleanup and Management chapters of the past Quarterly Reports and also including the Seventh Quarterly Report. However, the subproject manager responsible for the BIA Data Cleanup and Management chapter of Quarterly Status Report to the Court Number Seven has certified it as complete and accurate. He certified this report even in light of the Special Trustee's expressed concerns with its accuracy and quality.³³

This example of the disregard of the Special Trustee's authority points out the continued problem regarding the Special Trustee's direction of trust reform with the present BIA management structure. How can the Special Trustee effectively manage BIA trust reform "reform" when BIA's management opposes his involvement and direction? This is a management problem that has not been resolved by the Secretary's July 10, 2001 memorandum placing additional trust reform authority with the Special Trustee.³⁴

³³ The BIA Data Cleanup Subproject Manager must have been aware of the August 28, 2001 Data Cleanup meeting's presentations but still did not choose to revise his report before certifying to its accuracy on August 30, 2001. His subordinate attended that meeting and heard the entire presentation.

³⁴ As one example, there is evidence that the Special Trustee requested more authority than he was given by the Secretary of the Interior when he asked for increased power to direct trust reform operations. He was not provided that authority by the administration or could not accept what was offered with the restrictions imposed on it. After two weeks of negotiations between the Special Trustee, the Counselor to the Secretary, the Office of the Solicitor, and BIA, he accepted the authority he presently holds to direct all trust reform operations. That authority is severely limited with the ultimate decision on any action he proposes to take resting with the Secretary of the Interior if the BIA opposes it. See Second Report, **Tab 10I**.

The heart of trust reform problems is not the technical difficulty of providing an historical accounting, developing TAAMS, or carrying out data cleanup. As has been heard time and again, “these projects are not rocket science.” The genesis of the problem stems directly from the senior management who have refused to conduct the historical accounting, covered up their mismanagement of TAAMS’ development, and failed to effectively address the serious data cleanup issues or provide the management and resources necessary to accomplish that cleanup; all the while providing this Court with overly optimistic and misleading assessments of data cleanup and trust reform operations.

The present debate and investigation within DOI about the status of trust reform as reported in the Seventh Quarterly Report is a symptom of a larger problem that will directly affect the progress of data cleanup and trust reform in the future. As addressed in the Second Report of the Court Monitor, placing the Special Trustee in charge of trust reform without line authority over BIA managers forces him to rely on the good will and cooperation of BIA management to get the job done. His only recourse, if his specific directions are challenged, is to seek the support of the Secretary of the Interior. That process, if necessary, could well delay and frustrate the Special Trustee’s and his staff’s efforts.³⁵

The first time the Special Trustee has asserted his authority over BIA by questioning the accuracy and quality of the BIA’s descriptions in the Seventh Quarterly Report of the status of several subprojects including data cleanup, he is the official who is under examination by the Secretary’s Solicitor, not the BIA managers and their leadership who submitted what can best be described as information of questionable accuracy with regard to at least the BIA Data Cleanup subproject.

BIA Data Cleanup and trust reform review by the Special Trustee will require hard decisions to be made in the future about the role to be played by DOI and BIA management personnel involved in trust reform operations. The Special Trustee will be required to make some very unpopular choices about that management. His authority to carry out this and other critical supervisory tasks regarding overall trust reform will be subject to the same Secretarial review and questioning as he is now experiencing with his publicly expressed concerns about the accuracy of her Seventh Quarterly Report.

³⁵ In the “Department of the Interior’s Response to the Second Report of the Court Monitor,” submitted to this Court on August 24, 2001, the Interior Defendants stated that the Secretary delegated additional authority to the Special Trustee to ensure his capacity to implement trust reform after “consultation with the Court Monitor.” See Response at 2. It has been pointed out to the Counselor to the Secretary that the Court Monitor did not “consult” with the Secretary and, when asked his opinion of a draft of the Secretary’s memorandum by her Counselor, opined, in part, that without line authority over BIA, the Special Trustee would have continued difficulty directing trust reform. As was stated subsequently in the Second Report, without strong backing from the Secretary and similar cooperation from the Assistant Secretary For Indian Affairs, the Special Trustee and his staff have little chance of succeeding with the reorganization and direction of trust reform. See Second Report at 127.

He cannot succeed in such an environment and with limited authority subject to an involved appeal process to the Secretary of the Interior upon objection by BIA management to his plans and direction.

VI. REMARKS

A. The Past and Present Administrations

In the past two Reports, the Court Monitor has divided the Remarks section between the past and present administrations. It was necessary, in some cases, in fairness to the present administration, to separate out the actions of the past administration's political appointees and their subordinates. But as has also been previously addressed, trust reform has been, for the most part, conducted by the same DOI and BIA career senior managers during both the past and present administrations. Also, decisions have been made by this administration that have impacted on BIA Data Cleanup and what this Court knows of that subproject. The problems that have been observed with past data cleanup progress are the responsibility of *both* administrations' managers and, in the recent past, this administration's leadership.

The future and some of the past trust reform decisions are the responsibility of the present administration. Its representatives have stated they are focusing on the future. But that future has been irrevocably affected by the seven months of this administration's decisions on trust reform and BIA Data Cleanup and by its three Quarterly Reports' renditions (among other subprojects) of the status of BIA Data Cleanup.

The cry that "it didn't happen on our watch" can no longer provide a defense for this administration. The decisions made since January 20, 2001 up to the present were based on the goals and agendas of the managers that included some who were present in the last administration. The history of the preparation of and reporting about the TAAMS and BIA Data Cleanup subprojects involving this administration's last three Quarterly Reports is only one example of these managers' influence.

The additional history of the overall status of trust reform as exhibited in the historical accounting, TAAMS, and data cleanup projects casts a shadow over any future management of data cleanup and overall trust reform controlled by BIA senior management. Perhaps the Special Trustee and the Executive Director of Trust Projects and Systems can bring the required leadership and transparency to this effort. But that will require the strong support of both the Secretary of the Interior and the Assistant Secretary for Indian Affairs. The present dispute over the accuracy and quality of the Seventh Quarterly Report and the reaction of the Secretary of the Interior and her counselors do not provide the IIM account holders with much confidence that the Special Trustee will receive that support.

The plea that this administration must be given more time to institute its strategies and management plans over trust reform because it has had so little time to conduct a review of trust reform rings hollow. Had this administration's leadership conscientiously taken the time to examine the decisions that had been made before their arrival or have been made since about trust reform, they would not be requesting this Court for a one month's extension to file the Seventh Quarterly Report in order to determine where the truth lies in that Quarterly Report and in trust reform operations.

If the Secretary of the Interior and her appointees have asked the right questions about data cleanup and other trust reform subprojects that would appear required in light of the DOI's and BIA's history of mismanagement and recalcitrance regarding, respectively, trust reform and the *Cobell* litigation, they have been given the wrong answers; or chose to ignore the true answers; or unquestioningly accepted the absence of any answers.

The Interior defendants have asked this Court to start the clock running anew for their administration based on their performance to date. In less than four years another administration could be asking for the same leeway to correct the record of this administration's actions or inaction. The IIM account holders do not have the luxury of starting over. Neither, perhaps, should the Interior defendants.

B. The Career Civil Servants

The rank and file manager within the BIA Regions and Agencies continues to attempt to perform his or her regular trust duties while juggling one or more additional trust reform responsibilities. As one frustrated Realty manager stated at the Data Cleanup Meeting (paraphrasing her): "I have my regular job and, due to personnel losses or HLIP imposed subproject assignments, a total of five different positions; all of the highest priority. Which one do you want me to do first?" As another Regional LTRO manager stated: "We kept being asked to appoint people to take on additional HLIP subproject positions. When Washington asked us why we kept sending the same names for these positions, we told them those were the only people we had."

The Regional staffs have not been manned or trained sufficiently to handle the myriad trust reform assignments their senior managers, who seem to have little understanding of their personnel needs and breath of duties, consistently task them to do. It is one thing for DOI's leadership to say they have or are developing policies and plans to solve the problems they face. It is another to expect understaffed, under-trained, and under-supervised managers and employees, however competently they perform their regular trust duties, to carry out these trust reform policies and plans without the additional resources and training they need.

However, it is these career civil servants in the Regions and Agencies who have the knowledge of the title and realty functions that form the core of the trust expertise that is crucial to accomplish data cleanup and, in general, trust reform. They cannot be removed from the trust reform equation. They are the calculus to its solution.

What they desperately need to accomplish trust reform (and, specifically, the BIA Data Cleanup project) is a fulltime management team composed, in part, of professional leaders with field experience who understand their operations and requirements. They require committed management who will have the authority and Secretarial support to effectively respond to their personnel and resource requirements. They require centralized and coordinated direction to enable them to develop their TAAMS-based data storage and retrieval systems as an integrated national system rather than 12 separate Regional systems.

They must be given a management hierarchy that they trust has the experience and ability to direct their efforts. They cannot be expected to continue to respond to unrealistic and patently impossible milestones that are driven by decisions based on arbitrary dates set to satisfy institutional, political, or litigation goals. Setting such unattainable objectives does not encourage performance; it discourages both that performance and the morale of those Regional and Agency personnel attempting to conscientiously carry out their many-faceted assignments to the best of their abilities.

In the present environment, characterized by the Special Trustee's concerns documented in his September 10, 2001 response to the Secretary of the Interior, as well as the events regarding him that have occurred since he first raised these concerns, it is doubtful those needs can or will be met by DOI. Despite all of the Interior defendants' positive public pronouncements, the required high-level political and institutional will to bring about critical internal trust reform management and systems corrections has not been observed to date by the most concerned parties – the career civil servants and the IIM account holders. Without additional high-level management reorganization and major resource and personnel reallocation, and, potentially, other leadership solutions, reform of trust reform including the BIA Data Cleanup subproject will come slowly if at all.³⁶

³⁶ The Court should know that an interim report by EDS regarding its Special Trustee-directed review of the TAAMS and BIA Data Cleanup subprojects' systems and management will be provided the Special Trustee by October 31, 2001 with a final report on all trust reform subprojects to be submitted by the middle of December 2001.

Copies of the Third Report of the Court Monitor have been provided to:

**Sarah D. Himmelhoch
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
1425 New York Avenue
Washington, DC 20005**

**Dennis Gingold, Esquire
Keith Harper, Esquire
Elliot Levitas
Thaddeus Holt
%Native American Rights Fund
1712 N Street, N. W.
Washington, DC 20036**

**Hon. Alan Balaran
Special Master
1777 Pennsylvania Avenue, N.W.
Suite 1200
Washington, DC 20006**

Respectfully submitted,

**JOSEPH S. KIEFFER, III
Court Monitor
D.C. Bar No.235200
(202) 208-4078**

Date: _____